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Chief Justice Randall T. Shepard Gives State of the Judiciary Address To Indiana General Assembly

"Good Enough' Isn't Good Enough"

Over the last year as I have been co-editing a book on the history of Indiana law, I've come to appreciate an observation about our state by a Bloomington professor named James Madison. He says Indiana is still influenced by the spectacular failure of the biggest venture the state ever launched, the internal improvement plan of 1836, the most famous piece of which was the Wabash-Erie Canal. The resulting financial calamity brought the state government to the brink of bankruptcy, provoked the constitutional convention of 1850, and shaped the 1851 constitution.

Madison says that the lesson Hoosiers of the time drew was that big and bold is dangerous and that small and incremental is safer. If things are "good enough," we often decide to leave them alone rather than strive for a great leap up. In short, he says, the lesson has been that "good enough" is good enough.

One of my colleagues echoes this observation by noting that nothing really titanic has happened in the Indiana judiciary since the 1970s when the court system was fundamentally restructured. We have hardly stood still since then, but systemic changes have proven difficult. But there have been ways in which the Indiana court system hasn't worked all that well, and I argue that "good enough" isn't good enough any longer.

How Do You Find Out What's Going On?

In the course of resolving people's disputes, we generate millions of documents a year. Until the 1980s, we did this according to methods largely passed down from one generation of deputy clerks to another. Now every document is called by the same name in every courthouse and carries a standardized number, and we have state-wide record retention rules that dictate how long to keep specific documents.

Still, we have only begun to catch up with what a modern economy needs from its judicial system. Under the energetic leadership of Justice Frank Sullivan and our Court's Judicial Technology and Automation Committee—a project is well underway to make available to

every Indiana court a state-of-the-art computer system to keep track of and manage the nearly two million new cases that people bring us each year. This is the single most ambitious project ever undertaken by Indiana's judiciary.

In the course of this project, we have had to examine some of the most sensitive issues of the information age, like identity theft and protecting confidential records. Justice Brent Dickson led a task force that met every week for a year to craft some of the country's most thoughtful and balanced rules about access and confidentiality, which became effective January 1.

In another advance aided by electronics, local court rules will be posted on the Internet instead of a courthouse bulletin board and follow a uniform format.

And we're committed to using the power of electronics to help people understand the court system. Litigants and reporters can watch webcasts of oral arguments in the appellate courts, teachers can download educational materials, lawyers can learn about court decisions and orders, college students can read Indiana legal history or learn how to get into our program for minority and low-income law students. The use of these resources by citizens jumped 73 percent last year, to 2.8 million unique visits.

Fractured Structure

One of the perennial barriers to reform has been the framework of the state's court system, largely unaltered since before the turn of the last century. In effect, we have 92 court systems. The 19th century framework is okay, but just okay. We have supported bills to place the judges in a given courthouse under a single umbrella, which now exist in a majority of the urban counties. That's why we supported proposals to change the financial base of the trial court system. It's why I support measures to change the selection of trial judges in Marion County. The existing arrangements on structure, finance, and selection work well enough, but not as well as they should or can.

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We now study the workload of Indiana judges every year, and we periodically direct reallocation of cases when we uncover huge disparities. We use senior judges to rectify these problems and we plan to use them to focus on the most overburdened courts.

I also urge passage of House Bill 1777, designed to give judges and prosecutors a cost of living adjustment for the first time in eight years, financed by court user fees. The Public Officers Compensation Advisory Commission made recommendations for all three branches that I believe represent good policy. Representatives Foley and Richardson will carry this legislation for the judiciary and Governor Daniels has called this one of his priorities for the session.

Costly and Complicated

Despite all the efforts of recent years, many Americans still regard the court system as a place where it's easy to stumble your way in and costly and time-consuming to find your way out.

The burdens of this reality weigh especially hard on children. It's why we focus so strongly on mediation. Legislation passed last year will make possible the widespread use of mediation in cases involving children. We have created mediation programs in counties representing forty percent of the state's population. This spring we will offer training in family mediation, offering it free for people willing to take some family law mediation assignments without pay.

You also made it possible to pursue our relatively inexpensive experiments in Family Courts, which keep families bouncing around multiple courtrooms and improve our chances of protecting children who are actually threatened by their living situation.

The number of Indiana lawyers who donate their time helping people of modest means through these problems – we call it “pro bono” service — has reached a new all-time high. Indiana's system has attracted attention all over the country.

Rebuilding the American Jury

Something else that's needed attention for a long time is the way we manage that birthright of all Americans, trial by jury. But we've taken it for granted. We are determined to put a 21st century burnish on this ancient right — to treat people better when they come to the courthouse for jury service, to give them a quality orientation about the task ahead, and hand them better tools for their job. For example, every time jurors left the courtroom for lunch or recess the judge would say, “You must not talk about this case among yourselves until the trial is over.” Adults don't make group deci-

sions that way. Starting this month that's what we'll tell jurors: “If you want to discuss this among yourselves, that's fine, but don't get yourself locked in to an outcome until you've heard both sides.”

We also have to make juries more representative, which is why we support eliminating the many statutory exemptions from jury service. And it's why we've required using more than voter registration lists in creating pools of potential jurors. We hope this year to be able to provide every county with easy to use, up-to-date lists of names and addresses.

Criminal Alternatives Not Good Enough

Something that was just “good enough” for a very long time was the set of arrangements that we used for convicted criminals. Until the 1980s, the state simply left to happenstance the development of alternatives to prison, and virtually every incentive sent offenders to the Department of Correction, putting more demand on the state's general fund. This hasn't been good fiscal or public safety policy. Most of the alternatives to incarceration have been the product of local efforts led by judges and prosecutors and, recently, these alternatives have been assisted by the Department of Correction. But more must be done and we are prepared to help to produce better outcomes and relieve the enormous pressure the DOC budget represents.

I want to tell you some good news about the effort we have made together to create more credible public defender offices. In 1963, the U.S. Supreme Court required states to provide counsel at public expense, a hundred years after Indiana began doing so. The leading book on that decision was *Gideon's Trumpet*, by Anthony Lewis. He recently spoke about what he called “The Promise of *Gideon*.” He said that on the whole the promise has gone unfulfilled and that he saw little reason for general optimism. “Except in Indiana” he said, and proceeded to tell those assembled about what Indiana has done.

Conclusion

It is my aspiration, and the aspiration of my fellow judges, to create a system of justice to lead people all across America to appreciate Indiana for the decent place that it is – and lead our own citizens as they encounter their courts to regard them as places where judges and others do as much as human beings can do to deliver on the promise of substantial justice.

On that point, “good enough” can never be good enough.

For the fulltext version, visit our website at: www.IN.gov/judiciary/supreme/state_jud.html.

Dave Remondini

Service Awards Given to Indiana Appellate and Trial Judges

Five different organizations honored members of the Indiana judiciary this fall for their contributions to their communities and the legal profession.

The Indiana Bar Foundation presented the Law-Related Education Award to the First District of the Indiana Court of Appeals, which includes Judges L. Mark Bailey, John G. Baker, and Edward W. Najam. The award was given because of their commitment to broadening the public's understanding of the legal system. The Court heard oral arguments at different locations throughout Indiana.

The Indiana State Bar Association also honored Court of Appeals Judge Nancy Vaidik by presenting her with the Women in the Law Achievement Award.

The Indianapolis Bar Association presented the Hon. Paul H. Buchanan Jr. Award of Excellence to Court of Appeals Judge Carr Darden, a colleague of Judge Vaidik.

The Indianapolis Bar Association (IBA) and the Indianapolis Bar Foundation (IBF) bestows its most prestigious award upon individuals with long records of excellence and unique service to the legal profession. Established in 1990, the award is intended to be given annually, but only if a worthy recipient can be readily identified. Recipients of the award are individuals whose attainments as a lawyer have been notable, whose contributions to the IBA have been unique, and whose honorable service to the profession has extended over a significant period of time. The award is given both to reward those accomplishments and

to inspire others to such service.

Ball State University honored Court of Appeals Judge Margret G. Robb as one of six winners of the Indiana Women of Achievement Award. Judge Robb won her award for distinction in service to government. The Indiana Commission for Women and the Indiana Trial Lawyers Association nominated Judge Robb.

The Indianapolis Bar Association also honored a former Indiana Court of Appeals Judge, Betty Barteau. She was this year's recipient of the Antoinette Dakin Leach Award. Named for the first woman admitted to the practice of law in Indiana, the award was created by the IBA Women and the Law Division to honor outstanding women in the legal profession.

The Litigation Section of the Indiana State Bar Association each year recognizes three lawyers and one trial judge "who demonstrate outstanding civility and professionalism." The judicial honor was given to Delaware Circuit Court Judge Marianne L. Vorhees.

The Young Lawyers Section of the Indiana State Bar Association honored Bartholomew Circuit Court Judge Stephen Heimann as a judge who "provides substantial education and mentoring to young lawyers; fosters civility among attorneys who practice before the bench; epitomizes the core values of our profession: honesty, competence, and respect for

the judicial system; and, has a recognized reputation for providing service to the community." He is the first recipient of this award.

Also, the ISBA Committee for Racial Diversity in the Legal Profession honored with its annual Raab Emison Award two individuals, Lake Superior Court Judge Diane Kavadias Schneider, and former Lake Superior Court Magistrate Kris Costa Sakelararis. It is named for the former ISBA president and noted Vincennes attorney. The award was presented for their work in tailoring the National Association of Women Judges "Color Of Justice" program to the needs of Lake County. The program is designed to encourage minority students in the seventh through twelfth grades to consider as career goals the law and the judiciary.

Finally, the Indiana Pro Bono Commission named the Hon. David Dreyer of the Marion Superior Court as a co-winner of the 2004 Randall T. Shepard Award for his longtime support of efforts to increase pro bono services by lawyers in Indiana and across the country. Judge Dreyer, who was nominated by Judge William Hughes of the Hamilton Superior Court, was a co-winner along with Highland attorney Richard P. Komyatte, another longtime pro bono advocate. Previous winners of this award are Indiana Court Appeals Judge L. Mark Bailey and David J. Remondini, Counsel to the Chief Justice.

Chief Justice Shepard to Head Two National Groups

Chief Justice Shepard maintains a busy schedule on the national scene.

Chief Justice Randall T. Shepard will be the next Chair of the National Center for State Courts' (NCSC) Board of Directors and the next President of the Conference of Chief Justices (CCJ). CCJ is a national organization that represents the top judicial officers of the 50 states and U.S. territories, and the National Center serves as its executive staff. Both positions are one-year terms. The appointments were made during the National Center's Board meeting and CCJ's annual conference, July 25 – 29 in Salt Lake City, Utah.

"Chief Justice Shepard has worked closely with the National Center for years, and we are honored that he has moved into a leadership position," said Roger K. Warren, president of the National Center. "As a leader in the legal community, Chief Justice Shepard's knowledge and experience are invaluable to the National Center. He cares deeply about the importance of the work of America's state courts and the mission of the National Center as the preeminent national court reform organization."

The National Center's Board of Directors represents all levels and jurisdictions of state courts and the legal profession. During the Utah meetings, Wisconsin Chief Justice, Shirley S. Abrahamson, was named Chair of the Board and President of CCJ, and Justice Shepard was elected to step into the top jobs after her term ends. Established in 1949, CCJ is the primary voice for state courts before federal legislative and executive branches and works to promote legal reforms and improvements in state court administration.

Chief Justice Shepard has a far-reaching commitment to improving the justice system. For years, he has worked closely with the National Center to help improve the judicial selection process, one of NCSC's top initiatives. Chief Justice Shepard also was designated by the Conference of Chief Justices as their representative in the American Bar Association's project to revise the Model Judicial Code, which includes reference to judicial election issues. Justice Shepard was appointed to the Indiana Supreme Court in 1985 by Governor Robert D. Orr and became Chief Justice in 1987. He has served in that capacity longer than anyone in Indiana history. Prior to that, he served on the Vanderburgh Superior Court bench from 1980 to 1985.

The National Center, headquartered in Williamsburg, Virginia, is a non-profit court reform organization dedicated to improving the administration of justice by providing leadership and service to the state courts. The Conference of Chief Justices, under the leadership of United States Supreme Court Chief Justice Warren E. Burger, founded the National Center in 1971. It provides education and training, as well as technology, management, and research services to the nation's state courts. The National Center also is taking the lead on several key issues facing the justice system. For example, it has established a major civil justice initiative. This multi-year project is examining best practices in civil case management and the improvement of complex litigation procedures. The National Center is also driving other national initiatives, including judicial selection reform and increased citizen participation in jury service.

Food for Thought

"The most important political office is that of the private citizen."

Louis D. Brandeis

"When I was 40, my doctor advised me that a man in his 40s shouldn't play tennis. I heeded his advice carefully and could hardly wait until I reached 50 to start again."

Hugo L. Black

"If we desire respect for the law, we must first make the law respectable."

Louis D. Brandeis

"Common sense often makes good law."

William O. Douglas

"The mind of a bigot is like the pupil of the eye. The more light you shine on it, the more it will contract."

Oliver Wendell Holmes, Jr.

Family Court Mediation Starts to Soar

Mediation is “taking off” in the pilot family court projects in Indiana!

Bartholomew, Boone, Brown, Henry, Jackson, Lake, Lawrence, LaPorte, Marion, Monroe, Montgomery, Owen, Porter, Putnam, Tippecanoe, and Vigo Counties all have family court projects that provide mediation at a reduced cost to low-income families. Mediation is proving very successful in divorce and paternity cases, and is gaining popularity in CHINS and truancy cases.

Mediation is a non-adversarial conference with the parties outside of the courtroom. The mediator is a trained professional who helps the parties resolve their issues and reach agreements that are later submitted for court approval. Mediation allows family members to fashion their own remedies, and helps them develop problem-solving skills to avoid future litigation over child related issues.

Why are the 17 family court project counties focused on mediation? What has caused the recent explosion of interest in this alternative form of dispute resolution?

The Indiana Supreme Court initiated the Family Court Project in 2000 to develop model programs to better serve children and families in the court system. Affordable mediation has been a significant goal since the inception of the Project. Mediation avoids the stress and strain placed on families through traditional courtroom litigation, and mediation expedites the court's docket by avoiding unnecessary hearings. The family court counties are using family court grant funds to hire coordinators, or reallocate existing staff, to perform two essential tasks: (1) develop referral forms and other administrative processes necessary to get families into the mediation process; and, (2) locate resources and volunteer attorneys, law school students, and community service providers, to provide free or low cost mediation.

Legislation enacted in 2003 allows any county to write a plan to provide mediation services to low income families. They may fund that plan by assessing an additional \$20 fee in divorce and paternity filings. Counties continue to use family court grants as a funding source.

One of the newest mediation family court projects serves the four southern counties of Bartholomew, Brown, Lawrence and Jackson. Pat McSoley, a lawyer

and registered mediator, and his administrator wife, Paige, were hired to run the project by mutual agreement of the civil judges in these counties.

Mr. McSoley is scheduled once a month in each county to conduct an intake meeting with families referred to the court for mediation. He begins the monthly intake process by meeting together in the courtroom with all the referred families. He explains the benefits of mediation, gives an overview of the process, and distributes copies of the Indiana parenting time guidelines. He then meets individually with each family for 15 to 30 minutes. He asks basic questions regarding home address, number and names of children, employment, assets, and pending court cases. He determines if they can reach an agreement and just need assistance creating the legal documents, or whether they have contested issues that require mediation. Sessions are generally scheduled within two weeks. Assistance with document preparation is often handled the same day or scheduled for the next available time slot.

Mr. McSoley operates slightly different in Bartholomew County. There he helps families resolve their issues in CHINS (Child In Need of Services) cases, and truancy situations, through non-adversarial dispute resolution called “facilitation.”

In CHINS cases, he moderates a conference with the mother, the Office of Family and Children, the foster parents, the child advocate, and local service providers. He helps them agree on the services necessary to rehabilitate and reunite the family. He encourages each person in the conference to contribute needed information regarding the child and promotes the parents' involvement in the rehabilitation process.

In the truancy cases, Mr. McSoley facilitates a conference between the parents, school officials, and the Attend program coordinator to identify why the child has been absent from school and to resolve the problems causing the truancy. These conferences reduce tension between school personnel and parents, and motivate the family to take concrete steps to insure the child's school attendance.

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Kevin Smith, Named New Supreme Court Administrator

Kevin S. Smith, recently an attorney with Baker & Daniels and a former law clerk to Chief Justice Randall T. Shepard, has been appointed as the new Supreme Court Administrator, the Chief Justice announced on October 6.

Mr. Smith, who was a law clerk for Chief Justice Shepard from May 1996 to December 1997, began work for the Court on October 25, 2004.

Following his clerkship with the Indiana Supreme Court, he served as a law clerk for Judge Alice M. Batchelder of the Sixth Circuit United States Court of Appeals and then worked as an associate attorney with Bose McKinney & Evans LLP, of Indianapolis, before joining Baker & Daniels' Indianapolis office in May 2000.

Chief Justice Shepard said he is pleased Mr. Smith was returning to the Court. "The Court has been especially fortunate to have assistance in its appellate work from a staff of very talented lawyers and we expect Kevin Smith will supply sound leadership to our Administrator's office of that same caliber," said Chief Justice Shepard.

Mr. Smith replaces Douglas E. Cressler, who

left the Court last June to take a new position as Deputy Administrator for the federal Tenth Circuit Court of Appeals in Denver, Colorado.

The Supreme Court Administrator works at the direction of the Chief Justice and serves as the Court's chief appellate counsel, manages a legal and administrative staff, maintains statistical and physical records, as well as providing much of the payroll, benefit, budget and day-to-day operational management for the Court.

Mr. Smith graduated near the top of his class from Indiana University with a degree in Business and a minor in English in 1992. In 1996, he graduated magna cum laude from Indiana University School of Law-Bloomington where he was Notes and Comments Editor for the Indiana Law Journal and a member of the Order of the Coif.

While at Baker & Daniels, he was a member of the Labor and Employment Team, which included representing employers in litigation involving state and federal and employment discrimination and worker's compensation statutes at both the trial and appellate levels.

Judges Sharpnack and Boyer to Join CLE Commission

Chief Justice Randall T. Shepard announced the appointment of Indiana Court of Appeals Judge John T. Sharpnack to the Supreme Court's Commission on Continuing Legal Education.

"Judge Sharpnack will be a tremendous asset to the CLE Commission. Not only is he a distinguished jurist, but his background in private practice will be bring an important perspective to the Commission's work," said Chief Justice Shepard.

Judge Sharpnack graduated from the University of Cincinnati in 1955 where five years later he also received his LL.B. He was a partner with Sharpnack, Bigley, David and Rumble in Columbus, Ind. from 1963 until 1990. He began his Court of Appeals term on

January 1, 1991.

Justice Frank Sullivan Jr. announced the appointment of Allen County Superior Court Judge Nancy Boyer to the Supreme Court's Commission on Continuing Legal Education.

Judge Boyer will replace Jeanine Marie Gozdecki, of South Bend.

"We are very grateful for the tremendous leadership and skill Ms. Gozdecki has provided the Commission. Her contributions have been substantial and she will be missed. We are also looking forward to having Judge Boyer on the Commission. She is a first-rate trial judge who has a strong commitment to continuing legal education for our attorneys," said Justice Sullivan.

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Judges Sharpnack and Boyer to Join CLE Commission, continued from page 6

Judge Boyer graduated from DePauw University, cum laude, in 1973 and received her law degree, cum laude, from Indiana University-Indianapolis in 1976.

The Commission has 11 members. Their service is pro bono and each serves a term of three years. Both of their terms will be from January 1, 2005 through December 31, 2009.

The Commission is primarily responsible for approval of the individual legal educational requirements and for approval of the sponsors who present the educational seminars.

The Commission also sets standards for training courses for Indiana's registered mediators and regulates attorney specialization in the state.

Indiana Digitally Advanced: 4th in Nation

Indiana state government received some good news about its technical prowess while poised for a change in administration.

Governor Joe Kernan, prior to being replaced by newly elected Governor Mitch Daniels, recently announced that Indiana state government nationally ranks as the fourth most digitally advanced, according to the Center for Digital Government's 2004 Digital State Survey.

Governor Kernan said the recognition points to a focus throughout state government on ways to provide the most efficient, user-friendly services to Hoosiers.

"Our state agencies have worked hard in recent years to move state government to the forefront of the digital age, and the result is more efficiency and better service for our citizens," Kernan said. "Hoosiers now can conduct business with the state—from renewing drivers licenses and filling out permits to applying for professional licenses and reserving campsites—all online."

Center for Digital Government studied all 50 states for best practices and policies in information technology, and the use of digital technologies to better serve their citizens and streamline operations.

The Center compiled more than 60 measurements in four categories – service delivery, architecture and infrastructure, collaboration and leadership – for the final rankings. According to the center, the list is a ranking of how well states implement technology-based solutions in providing government services.

Indiana's ranking has improved each year since the Center began the survey in 1998. Indiana placed eighth in the last survey done in 2002.

Laura Larimer, the state's chief information officer, cited the establishment in April 2001 of an IT Task Force by Gov. Frank O'Bannon as significantly contributing to Indiana's advances. The task force worked to identify ways to improve services for citizens via the Internet. In

August 2003 the group evolved into the bipartisan Technology Leadership Council.

The current council addresses issues of direction, policy, inter-operability, and architecture, as well as developing new online constituent services.

"The 2004 Digital State Survey award recognizes the council leadership as one reason behind the innovative customer services we provide for all Hoosiers who interact digitally with the state," Larimer said. "We also owe our ranking to the many good people from across state government who ensure accessible and efficient information technology."

The council's current goals include offering broadband connections through the state, helping local governments provide online services, establishing an enterprise portal, and providing additional state resources online.

The State recently launched the Opportunity Indiana online registry for businesses to receive word of upcoming state projects and contracts. In late June, the Buy Indiana database was added to the Opportunity Indiana Web site so that businesses could market themselves by product, service, ZIP code or city to other businesses and consumers.

Indiana also is the first state in the nation to offer the United States Postal System Electronic Postmark service in a state court system. Since it was implemented in 2003, the Bureau of Motor Vehicles has provided 2,600 digital signatures and electronic postmarks to county prosecutors for certification of driver records.

"The Internet continues to challenge us all through the opportunities it presents," Kernan said. "Throughout state government, we have stepped up to that challenge in very significant ways. With each step, we are making government more accessible to Hoosiers and in turn strengthening the quality of services we provide."

Indiana Clerks and Courts Begin Implementing Supreme Court Policy on Access and Privacy of Court Records

An amendment to Administrative Rule 9 brings together in one place reference to all public access provisions that affect court records.

Recognizing that advancing technology and especially the ease of Internet access to court records presents new challenges and opportunities for access to court records, the Indiana Supreme Court undertook a comprehensive review of the subject matter. A task force comprised of 25 stake-holders proposed a rule change which, after a period of public comment, was adopted by the Indiana Supreme Court. The rule, Administrative Rule 9, already contained some confidentiality and public access provisions although confidentiality restrictions on information exists throughout federal law, state law, and other court rules.

Another set of amendments to the Indiana Trial Rules, Appellate Rules, Small Claims Court Rules, Rules of Original Action, Rules for Post Conviction Relief, Tax Court Rules, Rules for Appeals from City and Town Courts, and several other rule sets were amended in order to implement the provisions of Administrative Rule 9. The implementation provisions places the responsibility of segregating confidential information on the attorney and/or party tendering the information for filing and requires that information not for public access be filed on separate green paper.

The Division of State Court Administration developed a handbook to assist clerk and court staff, attorneys and the public regarding the application of the new provisions. The handbook is available at www.in.gov/judiciary/admin/publications.

The Division also held telephone conference tutorials which reached several hundred court and clerk employees. During the tutorials, court staff had an opportunity not only to hear the presentation but also participate in an interactive exchange of questions and answers.

As we implement Administrative Rule 9 provisions, it is important to keep the following precepts in mind.

- One of the main purposes of Admin.R. 9 is to assure access to court records and not to limit it. Thus, all courts and all clerks' offices must continue

to provide public access to court records unless the records are specifically excluded from public access.

- All information that was filed prior to January 1, 2005 and public at that time continues to be public, even if it contains social security numbers and other newly excluded information. Clerks and courts have no duty to redact or restrict access even if those materials would be considered confidential if they were filed after January 1, 2005.
- The provisions of TR 5(G) require that all confidential information tendered for filing to be on green paper. It is intended to encompass all confidential information and documents filed with a court, regardless of who prepared it. The Division of State Court Administration will be proposing a specific amendment to the Supreme Court to clarify the language. In the meantime, please be advised that requirements for green paper filing apply to all confidential information and/or documents submitted to the court by any entity, including probation departments, GAL/CASA programs, prosecutors, or any other court agencies or related entities. Documents submitted by non-court, non government entities, such as expert witnesses, physicians or schools, that do not comply with the green paper requirement, should be accepted for filing by the clerk's office, a green sheet attached as a cover sheet, and the report or document handled appropriately.
- Cases which are already confidential, such as adoption and CHINS cases, are exempt from the green paper requirements of Trial Rule 5(G). Specifically, Trial Rule 5(G)(4) is intended to provide this exception, although the published rule contains a typographical error which refers to Administrative Rule 9H rather than Administrative Rule 9G. This correction will be another rule amendment that the Division will be proposing to the Supreme Court. In the meantime, you should instruct parties filing mate-

Clerks & Courts begin implementing Supreme Court Policy on access and privacy of court records, continued from page 8

rials in cases which are already confidential pursuant to statute to continue filing their documents on regular white paper.

- Tax warrants filed with the clerk and placed in the tax warrant book are not a court records under our interpretation of the definitions in AR9. If and when a collection case is filed on the tax warrant (a case number is assigned), then that information does become part of a case file and should be handled according to TR(5)(G) and AR9.
- The Clerk must accept noncompliant filings. While the clerk's office has no responsibility to monitor the contents of filings, we suggest that it is helpful to participate in the educational process for individuals filing documents and indicate to them what things may need to be corrected in a filing to make it compliant with AR9.

One clerk's office has developed a simple checkbox cover sheet on green paper to be attached to the front of a noncompliant filing. It lists potential problems and the steps the clerk has taken to communicate those problems with the filer. If the filer takes no corrective action, it is then a matter that the judge can address at a later date (such as when the case comes up for a hearing or further disposition order). In the meantime, the noncompliant filing would remain confidential in the file.

- Please keep in mind that AR9 does provide clerks and their staff with immunity for disclosing confidential information if the disclosure was unintentional and unknowing.
- The rule covers all court records and provides no particular exception for information that comes to the court in the form of an exhibit. Exhibits which accompany filings, such as a contracts, a bill, or other document should exclude confidential information. In most instances the confidential information, such as the social security number, is not important to the litigation. The litigant submit-

ting the contract or bill could simply attach a copy with the social security numbers redacted. If the excluded confidential information is crucial to the litigation, than it must be segregated from the public information and submitted on separate green paper.

- Exhibits offered or entered into evidence during a public trial pose a somewhat different problem. The practical reality is that the information is already made public at a hearing and its segregation to green paper during the hearing becomes cumbersome. Thus, under its administrative responsibilities, the Division is opting for a practical application of the rule in such instances. Exhibits which are offered or admitted into evidence during a public proceeding need not be placed on green paper. This determination has been made while further study and examination of this subject is conducted. This means that in most cases exhibits which are offered or entered into evidence during a public trial may contain excluded information.

A caveat, however, exists in certain criminal and protective order cases where witness and victim address and other identifying information should be maintained strictly confidential.

- Materials filed with the Court of Appeals, Supreme Court, or Tax Court must be in compliance with TR5(G). Please note, that if materials were in a public court record prior to January 1, 2005 (ie. in the trial court file), they are not subject to redaction or restriction. Only materials which have been deemed confidential pursuant to AR9 after January 1, 2005 must be filed according to TR5(G) with the appellate courts. Also, the entire contents of the court file, including all confidential information, must be filed with the appellate courts on green paper.

You may direct questions to John Newman, Tom Jones, Ron Miller, or Camille Wiggins at the Division's main number of (317) 232-2542.

Ron Miller

Indiana Supreme Court Sponsors ADR Training for Family Law Cases

The Indiana Supreme Court is embarking on an effort to enhance alternative dispute resolution for family law cases of low income and pro se litigants.

The Court also wants to increase the availability of pro bono mediation for such cases. The Court's effort dovetails with a legislative initiative which enables the trial courts in a county to establish a local plan for alternative dispute resolution of such cases and fund the plans through an earmarked \$20 fee. The Supreme Court will provide training to attorneys free of charge in exchange for their committing to provide pro bono mediation to the targeted litigants. The Court's goal is to develop a cadre of attorneys with specialized knowledge in mediating divorce and paternity cases for litigants who otherwise might not be able to afford alternative dispute resolution.

The legislation IC 33-23-6 et seq., became effective July 1, 2003. It provides that any court system can develop a written plan (referred to as an ADR Plan) to provide subsidized Alternative Dispute Resolution (ADR) services to low income and pro se parties in divorce and paternity cases. The ADR Plan must comply with specific standards. It must specify, among other things, the ADR services that will be provided, financial or other eligibility criteria, and a mechanism to determine the amount of co-payment each eligible party is required to make. The ADR Plan must be filed with the Indiana Judicial Conference and approved by the Supreme Court Division of State Court Administration. Once the plan is filed, the County clerk may collect a \$20 ADR Fee on each new divorce and paternity case filing. The ADR Fees and co-payments are used to subsidize the cost of the ADR services. The availability of pro bono and reduced-cost mediation is important to the success of this program, and the Supreme Court is committed to making

ADR available to the targeted litigants.

To encourage the implementation of ADR Plans, and the corresponding delivery of subsidized ADR services to low income parties, the Supreme Court has committed to provide specialized domestic relations mediation training at no cost to a set number of attorneys who agree to conduct pro bono mediations. The Court will select attorneys from the entire state but will target the 14 Pro Bono Districts and counties with ADR Plans.

It is anticipated that the indigent or low income parties served by the ADR Plan often will not be represented by counsel (referred to as proceeding pro se), and may have significant financial or social needs impacting child custody and support. The court is asking that the specialized domestic relations mediation training should address procedural and ethical issues in pro se cases, as well as a broad range of social issues of poverty, unemployment, substance abuse, and parental conflict. Potential criminal issues of child abuse and domestic violence should also be addressed. This training will emphasize mediation in paternity cases as well as divorce, including post-judgment situations in both case types.

The Supreme Court seeks individuals or entities to administer all aspects of this specialized domestic relations mediation training and has issued a Request for Proposal.

This effort will be spearheaded by the Supreme Court Division of State Court Administration. For further information, contact Ms. Francie Hill, Family Court Consultant for the Division, at frances_hill@hotmail.com.

Justice Brent Dickson Receives Spirit of Philanthropy Award

Indiana Supreme Court Justice Brent Dickson has received the sixteenth annual IUPUI Spirit of Philanthropy Award for 2004.

Each school on the IUPUI campus honors those who provide exemplary volunteer service of financial support for the school. IU-Indianapolis Law School Dean Tony Tarr and IUPUI Chancellor Charles R. Bantz presented the award to Justice Dickson.

Justice Dickson has taught a law school course in Indiana Constitutional Law and often serves as a volunteer Moot Court Judge. He has also been part of a number of law school alumni programs and received the law school's Distinguished Alumni Service Award in 1999.

Indiana Supreme Court Aims for Uniformity in the Promulgation of Local Court Rules

The Indiana Supreme Court amended Trial Rule 81 to establish a structure and a standard numbering format for promulgating local court rules.

The amendment was the product of several years of work by the Supreme Court Committee on Local Rules (Local Rules Committee), chaired by Court of Appeals Judge Margret Robb, and the Indiana Supreme Court Committee on Rules of Practice and Procedure (Rules Committee), chaired by Mary Larimore, an Indianapolis practitioner.

The Local Rules Committee started its work by surveying all courts and requesting copies of all local rules. Next followed an in-depth review and analysis of the substance and structure of local rules submitted by the various courts. In the fall of 2003, the Local Rules Committee recommended to the Rules Committee that Trial Rule 81 be amended in order to establish a “user friendly” format for numbering local rules, promulgating amendments and, most importantly, making local rules easily available to the practicing bar and public.

The Rules Committee decided to recommend the proposed amendment to the Supreme Court, with certain changes, and published its recommendation for comment. In May 2004, the Rules Committee made its final recommendation to the Supreme Court, and the Court adopted the amendment to be effective January 1, 2005.

The new amendments do not change the authority of courts to pass local rules. It does address a problem in locating current local court rules noted by Indiana law practitioners. All local rules must be published on the Indiana judicial website so that they are easily accessible. The Division of State Court Administration will establish and publish a uniform annual schedule for

adoption and amendments of local rules, and a standard format for drafting, amending, and numbering local rules. Trial Rule 81(B) also provides for notice and transmission for proposed local rules, allowing for at least 45 days for comments to be received.

Pursuant to this directive, the Division published a *Schedule and Format for Adoption of Local Rules*.

Local rules promulgated after the January 1, 2005 must comply with the provisions of the amended rule. To continue in effect, local rules promulgated before the effective date of the amendment must be brought in compliance with the rule after January 1, 2007. This means that courts have two years to review, reorganize, renumber, and publish their local rules.

Pursuant to Trial Rule 81(A), courts in a county are **encouraged** to promulgate one set of local rules for all courts of record in the county. And, the courts are **required** to do so after January 1, 2007. The county-wide single set of local rules may reflect different practices due to geographic, jurisdictional and other variables.

For example, the court or division in the county that handles the probate jurisdiction could have a set of local rules that pertain only to that court. The intent of T.R. 81 is to make such probate rules part of the county’s single set of local rules even though they would only apply to cases handled by one of the courts or divisions.

The Division of State Court Administration will provide assistance in restructuring and renumbering local rules to courts that request it.

Lilly Judson

Guide for Hearing Officers in Attorney Disciplinary Cases Now Available on our Web Site

Please visit the court’s web site at <http://www.in.gov/judiciary/> to view the newly published guide for hearing officers in attorney disciplinary cases. The 15-page docu-

ment is available in PDF format for easy printing and reference.

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Our goal is to foster communications, respond to concerns, and contribute to the spirit and pride that encompasses the work of all members of the judiciary around the state. We welcome your comments, suggestions and news. If you have an article, advertisement, announcement, or particular issue you would like to see in our publication, please contact us.

If you would like to receive this newsletter via e-mail, or by accessing our website, please send a message to dguthrie@courts.state.in.us to have your name added to our electronic list and removed from our hardcopy mailing list.

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Please Circulate to Co-workers

This newsletter reports on important administrative matters. Please keep for future reference.

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